

The Servicemembers Civil Relief Act only Protects Service Members

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

4.0—SCRA generally

4.3—SCRA right to a continuance and protection against default judgment

Q: I am an attorney, practicing family law in California. Doing an Internet search, I found and read with great interest your Law Review 15019 (February 2015), about the North Carolina Supreme Court reprimand of a family court judge who failed to comply with the Servicemembers Civil Relief Act (SCRA) in a divorce case involving a United States Army soldier serving in South Korea. I have a client who is currently serving in Afghanistan, and his wife chose this as the “perfect time” to sue him for divorce. In accordance with the SCRA, I requested a continuance for my client, until he returns home from Afghanistan at the end of this calendar year. The judge refused to grant any such continuance. I provided her a copy of your Law Review 15019, and she insisted that the SCRA does not apply to my client in his current circumstances.

My client graduated from the United States Military Academy (West Point) in 1980. He served on active duty for eight years and then affiliated with the Army Reserve, where he served part-time for another 22 years, until he retired in 2010. In the years following the terrorist attacks of September 11, 2001, my client was recalled to active duty three times for service in Iraq and Afghanistan. I believe that my client is a member of your association, the Reserve Officers Association (ROA).

¹ We invite the reader’s attention to www.servicemembers-lawcenter.org. You will find more than 1,350 “Law Review” articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997.

² Captain Wright is the author or co-author of about 1,200 of ROA’s 1,350 published “Law Review” articles. He was the Director of ROA’s Service Members Law Center (SMLC), as a full-time employee of ROA, from June 2009 through May 2015. During that time, he received and responded to more than 35,000 e-mail and telephone inquiries. He is no longer employed by ROA, but he is continuing the SMLC on a part-time, volunteer basis, as a member of ROA. He is available at ROA headquarters on Wednesday and Thursday evenings. The e-mail is SWright@roa.org and the telephone number is (800) 809-9448, ext. 730. Please understand that Captain Wright is a volunteer, and he may not be able to respond to your telephone call or e-mail on the same day. Captain Wright has returned to Tully Rinckey PLLC, the law firm where he was employed before ROA established the SMLC in June 2009.

This time, my client is employed in Afghanistan. He works for a major Department of Defense (DOD) contractor—Daddy Warbucks International (DWI). Both the DWI country manager and the U.S. Army Colonel whose command is supported by the DWI contract have written to the court, saying that my client cannot be spared from his current assignment until December 2015 and have implored the judge to grant him a continuance. Is my client entitled to a continuance under the SCRA?

A: No. Your client was entitled to protections under the SCRA when he was called to active duty previously. He is not entitled to those protections now. The SCRA simply does not apply to employees of DOD contractors, nor does this law apply to civilian employees of DOD, the Department of State, the Drug Enforcement Administration, the Central Intelligence Agency, or other federal agencies that send civilian employees to overseas assignments.

The SCRA provides important rights to “servicemembers” when they perform “military service.” Congress enacted the SCRA in 2003, as a long-overdue rewrite of the Soldiers’ and Sailors’ Civil Relief Act, which was originally enacted in 1917, shortly after the United States entered World War I. The SCRA is codified in the Appendix of title 50 of the United States Code, at sections 501 through 597b (50 U.S.C. App. 501-597b).

Section 101 of the SCRA (50 U.S.C. App. 511) defines nine terms used in this law, including “servicemember” and “military service.” The term “servicemember” is defined as follows: “The term ‘servicemember’ means a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10, United States Code.”³ Section 101(a)(5) recognizes our nation’s seven uniformed services, which are the five armed forces (Army, Navy, Marine Corps, Air Force, and Coast Guard) plus the commissioned corps of the Public Health Service and the commissioned corps of the National Oceanic & Atmospheric Administration.⁴

Section 101 of the SCRA defines “military service” as follows: “The term ‘military service’ means—(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—(i) active duty, as defined in section 101(d)(1) of title 10, United States Code.”⁵

Your client is not currently on active duty and is not currently performing “military service” as defined by the SCRA. The SCRA protections, including the right to a continuance and to protection against a default judgment, do not apply to your client at this time

³ 50 U.S.C. App. 511(1).

⁴ 10 U.S.C. 101(a)(5).

⁵ 50 U.S.C. App. 511(2)(A)(i).